IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Crl.MC.No. 8962 of 2002()

CRRP.31/2000 of SESSIONS COURT, MANJERI
MC.16/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT I, PERINTHALANNA

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PETITIONER(S): REVIEW PETITIONER/CR.PETITIONER

KUPPOOTH VEERAN, S/O. KUPPOOTH HASSAN,
KUNNAKKAVU,ELAMKULAM, PERINTHALANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S): RESPONDENT/PETITIONER

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1. NEERANI SAMEERA D/O. NEERANI VEERAN,
PALATHOLE, ELAMKULAM, PERINTHALMANNA,
MALAPPURAM DISTRICT.

2. THE STATE OF KERALA REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SMT.SMITHA SUKUMAR.
SRI.A.MOHAMED MUSTAQUE FOR R1
SRI.P.VIJAYA BHANU(AMICUS CURIAE)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.M.C. No.8962 of 2002

Dated 14th November, 2007.

O R D E R

This petition is filed challenging the order passed by the Sessions Court in a revision petition filed by petitioner.

2. Petitioner and respondent were husband and wife. They were married on 1.12.1996 and respondent was divorced on 18.10.1997. The respondent filed a petition under Section 3 of the Muslim Women (Protection of rights on divorce) Act 1986 ('the Act' for short) claiming fair provision and maintenance etc. on 21.3.1998. The said petition was allowed on 8.5.2000 after enquiry. The learned Magistrate directed the petitioner to pay a sum of Rs.10,000/- being the value of 'mahar', Rs.4,500/- being the expenses during 'iddat' and a sum of Rs.1,50,000/- towards reasonable and fair provision for future maintenance of the petitioner. Thus, a total amount of Rs.1,64,500/- was granted.

3. A criminal revision petition was filed challenging the above order. During the pendency of the revision petition, first respondent got re-married and therefore, a document was

produced proving the re-marriage. The said document is Ext.D1. The re-marriage was on 27.12.2001, much after filing of the revision petition. The revisional court found that the factum of re-marriage is to be taken into account while fixing the amount payable as future maintenance. Therefore, though re-marriage was effected after 4 years of divorce a period of 10 years was taken for fixing reasonable and fair provision. Accordingly, the amount payable under this head was fixed at Rs.1,20,000/- reducing the amount which was already ordered by the Magistrate. The amount payable during 'iddat' period was also reduced to Rs.3000/- and the total amount was fixed at Rs.1,23,000/-. The said order is under challenge in this petition filed under Section 482 of the Cr.P.C.

4. According to petitioner, the court below committed an error in taking 10 years for fixing the reasonable and fair provision to be payable to the respondent-divorced wife even though it was established and admitted that the respondent got re-married. The respondent got re-married after 4 years of the divorce and hence it is contended that the

court went wrong in taking into account 10 years for fixing fair and reasonable provision.

5. In short, the correctness of the order on the facts of this case is challenged in this petition. It is well settled that a petition under Section 482 Cr.P.C. cannot be filed to circumvent or substitute a second revision in view of the bar under Section 397(3) Cr.P.C.(vide **Rajathi v. Ganesan** (AIR 1999 SC 2374) and **Rajan Kumar Machananda v. State of Karnataka** [(1990) SCC Crl.537]. However, it is made clear in the decision reported in **Kailash Verma v. Punjab State Civil Supplies Corporation and another** (2005(2) SCC 571) that the High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of court or when mandatory provisions of the law are not complied with etc. This power can be exercised only sparingly, since there is a bar under Section 397(3) to entertain a second revision and the exercise of inherent power cannot be invoked to overcome the bar under Section 397(3) Cr.P.C.

6. Keeping the above principles of law in mind and

on considering the entire facts and circumstances and records, I find that this is not a fit case to interfere under Section 482 of the Cr.P.C. Until an order was passed, directing the petitioner to pay the reasonable and fair provision etc. on 8.5.2000 by the Magistrate Court, respondent had not been remarried. Even at the time of filing the revision there was no re-marriage. It is only during the pendency of the petition that the respondent was re-married on 27.12.2001 as evidenced by Ext.B1.

7. A Division Bench of this Court in **Abdul Hameed v. Fousiya**, [2004(3)KLT 1049] held that “remarriage has only a limited impact on the claim and that too only in the matter of fixation of a fair provision. Likewise, we hold that a remarriage of divorced woman will not confer a cause of action for the former husband for a direction for re-gurgling the benefits ordered/paid as the statute has not envisaged such a contingency. When the liabilities had been enquired and adjudged under a special enactment, by indirect methods, the benefit payable cannot be withheld or recovered”

8. If the above dictum is followed, the revisional

court ought not to have interfered in the quantum ordered towards reasonable and fair provision, since it is held by the Division Bench that a remarriage of the divorced woman will not confer a cause of action for former husband for a direction for avoiding the benefits ordered in favour of the wife. Since remarriage had taken place during the pendency of the revision, revisional court interfered in the quantum awarded in favour of the wife. This itself may not be proper or legal in the light of the dictum laid down in **Abdul Hameed v. Fousiya**, [2004(3)KLT 1049].

9. Therefore, there is no ground to interfere with the quantum by granting further reduction in the amount. The Division Bench of this Court held that remarriage of the divorced woman will not confer a cause of action for the former husband to avoid payment or wriggle out of the benefits already ordered since the statute has not envisaged such contingency.

10. At the time when the original order was passed, the respondent was not married. Therefore, the petitioner was

bound to pay and comply with the order passed. The subsequent remarriage would have conferred cause of action to shirk off the liability or responsibility to pay the amount which is already ordered, going by the dictum laid down by the Division Bench in **Abdul Hameed's case** (supra). Hence, I find no ground to interfere with the impugned order to reduce the quantum any further.

This petition is dismissed.

K.HEMA, JUDGE.

Krs.